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AT HARRISONBURG, VA  
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By: Hon. James G. Welsh  
U.S. Magistrate Judge

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### **Findings**

1. The defendant has the present ability to consult with his attorney;
2. The defendant has the present ability to consult with his attorney with a reasonable degree of rational and factual understanding and a rational and factual understanding of the proceedings against him in this matter (*See Drope. Missouri*; 420 U.S. 162, 171 (389, (1975); *Indiana v. Edwards*, \_\_\_ U.S. \_\_\_, 128 S.Ct. 2379, 2383 (2008));
3. The FMC-Butner report is consistent with psychiatric theory, research and practice;
4. The results of the FMC-Butner evaluation and the defendant's current clinical presentation are based on reliable psychiatric assessment procedures and testing results;
5. The defendant is not suffering from a mental disease or defect rendering him mentally incompetent to the extent he is unable to understand the nature and consequences of the proceedings filed against him, or properly to assist his attorney in his own defense;
6. The competency standard to plead guilty is the same as that to stand trial (*See Godinez v. Moran*, 509 U.S. 389, 398-401 (1993); *United States v. Locke*, 269 Fed. Appx. 292,294 (4<sup>th</sup> Cir. 2008);
7. The forgoing determinations were made by a preponderance of the evidence (*See United States v. Locke*, 269 Fed. Appx. at 293;
8. The defendant was at all times present in person and by counsel; and
9. The pretrial delays since March 9, 2009 are excluded from the time limits of the

Speedy Trial Act, 18 U.S.C. §§ 3161 *et seq.* (See *Henderson v. United States*, 476 U.S. 321, 330 (1986)).

### **Recommended Disposition**

Based on the above findings of fact, the undersigned RECOMMENDS that the court accept FMC-Butner evaluation, find the defendant COMPETENT TO STAND TRIAL, and the trial of this case be scheduled for a date convenient to the presiding district judge.

### **Notice to Parties**

Notice is hereby given to the provisions of 28 U.S.C. § 636(b)(1)(C): Within ten (10) days after being served with a copy of this Report and Recommendation, any party may serve and file written objections to such proposed findings and recommendations as provided by the rules of court. The presiding district judge shall make a *de novo* determination of those portions of the report or specified findings or recommendations to which objection is made. The presiding district judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the undersigned. The presiding district judge may also receive further evidence or recommit the matter to the undersigned with instructions. **A failure to file timely written objections to these proposed findings and recommendations within ten (10) days could waive appellate review.**

At the conclusion of the ten-day period, the Clerk is directed to transmit the record in this matter to the presiding United States district judge, and the clerk is further directed to transmit a copy of this Report and Recommendation to all counsel of record.

DATED: 13<sup>th</sup> day of July 2009.

/s/ *James G. Welsh*  
United States Magistrate Judge